

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

MARVIS LASHAUN HERVEY,)
ADC # 146833)
Petitioner,)
v.)
RAY HOBBS, Director, Arkansas)
Department of Correction)
Respondent.)

Case No. 5:12-CV-00151 JMM-JTK

PROPOSED FINDINGS AND RECOMMENDATIONS

Instructions

The following recommended disposition has been sent to United States District Court Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

Disposition

Petitioner, an inmate in the Arkansas Department of Correction, has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. No. 2). On June 19, 2012, Respondent filed a Motion to Dismiss (Doc. No. 10) based on Petitioner’s failure to exhaust his state remedies. Petitioner did not respond to this motion.

Given the fact that Petitioner currently has a pending motion for postconviction relief in the Pulaski County Circuit Court, it is apparent that Petitioner has not exhausted his remedies in accordance with 28 U.S.C. § 2254(b-c). Thus, it is plain that any involvement of the federal courts is premature at this time. Accordingly, Respondent’s Motion to Dismiss is GRANTED, and the Petition is dismissed without prejudice. *See* Rules Governing § 2254 Cases, Rule 4.

IT IS SO ORDERED this 20th day of September, 2012.



United States Magistrate Judge